that any claim she conceived she possessed should have been made before the Kathi at the time of the divorce.

The parties are primitive peasants. There was disagreement and the husband (the defendant) divorced the plaintiff by Mohamedan law about a year ago. There is no evidence that the Kathi was notified, and I do not find that sharikat can only be claimed before the Kathi. It may be that the woman does not know of the divorce until after it has been pronounced.

The parties were married on the 8th of April, 1926, (Exhibit "B") but I had no evidence of the registration of the divorce in accordance with section 5 of Enactment No. 109 (Sheriah Courts).

As to Mr. Taylor's other point it is established in *Rasinah v. Said*[1] that a woman can claim sharikat on divorce by the husband, and I find no reason why re-marriage should bar or extinguish such a claim.

It is a matter of regret that more publications on research on this subject of sharikat are not available. Malay Family Law published in 1937 by Taylor J. contains much valuable information, and a further study and summary with reported cases would be most valuable.

Quite clearly it is wrong to regard the subject as one of Mohamedan Law. Gompertz C.J. in *Laton v. Ramah*[2] rightly declared it to be Malay customary law, and it is established that on divorce a woman in Kedah is entitled by customary law to half of any property acquired during coverture by joint effort.

In this case, I find it established that on marriage the parties possessed no real property. On the 15th of October, 1934, some eight years after marriage, Exhibit "A" shows the acquirement of land S.P.K. 4057. Still later State land Surat Akuan 165/02 was obtained, but that reverted to the State on the 1st of October, 1949, and the plaintiff makes no claim in respect of this property. In both instances the titles are and were respectively in the name of the defendant.

There is evidence that the plaintiff was seen working over a period on the land S.P.K. 4057 with her then husband the defendant.

In my judgment once it is established that the property was acquired subsequent to marriage, and the wife was seen working thereon, a presumption arises that on divorce it is subject to sharikat. This can be rebutted by evidence showing that the land was acquired by the sole efforts and resources of the husband. It is impossible in most cases for the woman to prove the purchase of the land from monies acquired by joint labour, the family purse is a private matter with the husband and wife, it can seldom be proved by extraneous evidence. If, for example, the husband inherited money or earned it separately, and with such funds purchased land, then obviously the property is vested in him alone, but the fact that he is the title holder is not in itself sufficient to dismiss the wife's claim; it is natural for the title to be registered in the name of the husband.

To revert to the claim, there was insufficient evidence to establish item (c) for $35/-, nor do I find enough to sustain item (b) in respect of cattle, but as regards the claim for half the land in S.P.K. 4057 the plaintiff's evidence stands.

I therefore adjudge that the plaintiff has established her claim to ½ share in the land S.P.K. 4057, and in the absence of defence evidence to rebut the claim succeeds.

The Assistant Registrar of this Court is empowered to effect the necessary transfer to the plaintiff. Each party to bear their own costs.

Order accordingly.

PUBLIC PROSECUTOR v. TALIB BIN AHMAD.

[Orig. Crim. Juris. (Laville, J.) February 14, 1950]

[Muar — Emergency Case No. 2 of 1950]

Arms Enactment, Johore, ss. 1(ii), 3, 4, 53 and 54 — Firearms and Ammunition (Unlawful Possession) Ordinance, 1946 — Arms the property of or under the immediate control of the Government.

In this case the accused was charged with possession of a firearm which was not a firearm he was duly licensed to carry under the Arms Enactment of Johore. On the facts it appeared that the accused was an Auxiliary Police Constable and had got hold of the unregistered weapon in an attempt to aid police informers.

Held, that when the accused succeeded in getting hold of the unregistered weapon, he was acting within the scope of his duty and the weapon was therefore under the immediate control of the accused as an Auxiliary Police Officer and a member of the Government of Johore and that he therefore required no licence under the Arms Enactment to justify his possession.

CRIMINAL TRIAL.

D. B. W. Good for the Public Prosecutor.

Accused in person.

Laville, J. : — In this case accused Talib is charged with possessing a firearm, to wit, a rifle which was not a firearm he was duly licensed to carry under the Arms Enactment of the Laws of Johore and had thereby committed an offence against sec. 4 of the Arms Enactment punishable under sec. 3 of the Firearms and Ammunition (Unlawful Possession) Ordinance, 1946.

Sec. 3 of the Enactment, read with sec. 4, prohibits the possession of arms save under a licence issued under the Enactment. Certain persons are exempted from the need to have a licence to possess arms under the Enactment, sec. 4(iii) and sec. 54, and certain arms are likewise excluded from the class of arms, the possessor of which must have a licence for them. The latter exceptions are created by sec. 53 and sec. 1 (ii). The former section requires the exempted class of arms to be gazetted, but sec. 1 (ii) is of more general application.

Sec. 1 (ii) exempts from all provisions of the Enactment all arms which are the property of or under the *immediate* control of the Government of Johore.

The question arises as to what arms come within these two descriptions of exempted arms. Clearly all arms lawfully acquired by purchase or gift by the Govt. of Johore for use by its servants in their several official capacities fall within the first category of exempted arms. What then are arms which, though not the property of the Govt. of Johore, are arms under its immediate control? In my opinion these are arms lent to, or deposited with the said Govt. for any purpose subject to the right of the owner to recover possession or transmute the temporary possession of the Johore Govt. into ownership. It also must include all arms lawfully seized by the Govt. of Johore in the execution of its duty of administering the law and preserving the peace, and all arms temporarily in the possession of the servants of the said Govt. for such purposes as examination, registration and such like. Such dominion over the arms does not amount to ownership or possession which entails a right to general use of the property, but is merely limited to use for a definite time and purpose.

The Govt. of Johore is the sum total of the officials employed by H. H. the Sultan to execute the functions of the Ruler, and any article in the custody or control of any one such official capacity and within the scope of his official duties and responsibilities as recognised by law or custom, is in the custody of the Govt. of Johore, and if the said official has the article within the power of his disposal, however limited that disposal may be, such article is under his immediate control and so under the immediate control of the Govt. of Johore.

In this case the evidence is that accused Talib was an Auxiliary Police Constable at Sengarang and was found in possession of an unregistered rifle at 10 p.m. on 30th September 1949 in the company of four other people. If that arm was, when in his possession, in the immediate control of the Govt. of Johore, it is not an arm for which the holder requires a licence under Arms Enactment (No. 64) and he has committed no offence under sec. 4 of the Arms Enactment by not having a licence for it.

It is common ground to the prosecution and the defence that the accused is A.P.C. 4442, Senggarang, that Tahir an informer, at the instance of one Embok, E.P.C. 3779 Batu Pahat, was seeking for information as to unregistered rifles, that Tahir got in touch with one Munap who agreed to help him and knew he, Tahir, was working for the police, i.e. Embok.

Munap in turn contacted accused Talib, who was his brother-in-law, and told him of his connection with Tahir and asked Talib's help, which Talib agreed to give. Talib's evidence is that he knew Tahir was an informer for Embok and agreed to help him to get hold of an unlicensed rifle. As an A.P.C. he reported this to his section leader Sampol who agreed to help him in the matter; in process of doing so he went to another A.P.C. of his section, Mat Dehan, and broached the subject. Mat Dehan said he could produce such a rifle. Munap was informed of this by Talib and Sampol, and then Munap and Tahir, the two informers, with the help of the police laid a trap which resulted in the arrest of Talib who was carrying the rifle at the time.

It is clear from prosecution witness, Mr. MacNabb, that it forms part of the duty of an A.P.C. to aid a police informer in getting information and recovering illicit arms. It is clear that E.P.C. Embok employed Tahir as an informer and that Munap knew Tahir was an informer, and I have no doubt that accused also knew that Tahir was working for Embok. I am not prepared to accept Munap's statement that Talib did not know this. Sampol, accused's section leader, says that accused reported to him that he was helping an informer and Sampol gave his sanction and help and was the man who was instrumental in finding one of his own men, A.P.C. Mat Dehan, who could produce such a weapon.

It is abundantly clear that accused considered it was his duty to aid police informers and was attempting to do so in this matter. Other police took the same view, i.e. Embok and Sampol and presumably Mat Dehan. Mr. MacNabb and Che Baharum, the district A.P.C. leader, agree that it is part of the duty of A.P.C.s to do so. I hold therefore that in trying to get hold of the unregistered weapon accused was acting within the scope of his duty. It follows that when he succeeded in doing so the weapon was under the

immediate control of accused as an A.P.C. and a member of the Govt. of Johore and that he required no licence under the Arms Enactment to justify his possession.

How far his plans for handing over the immediate control of the weapon to the informer were innocent is another matter, though it may be argued that as he knew the informer was a police informer and would in some way put the weapon into the hands of his employer and as it is agreed that he was acting in exercise of his duty to help the police informer, it may be that even these plans were justified.

This case has revealed the weakness of the system by which P.C.s are allowed to help informers. It is beyond doubt in my opinion that Embok, and Talib and Sampol were far more concerned with seeing that the informer should get a reward, of which they were to get a share, than with arresting the man who had the real possession of the rifle, i.e. Mat Dehan, though they could easily have done so. It is possible, of course, that Mat Dehan himself got the weapon from someone who was not an A.P.C. It should be made an offence for any P.C. to receive money or reward in any shape or form from a police informer for any help or information given to the informer. Otherwise, as is clear from this case, an informer and a band of A.P.C.s can conduct at the expense of Govt. a very profitable traffic in arms, by the A.P.C.s allowing the men whom they find with illegal arms to be trapped by an informer, rather than arrested instanter by themselves.

I hold that this rifle 'F' was, when in the possession of Talib, in the immediate control of the Govt. of Johore and therefore that in failing to have a licence to possess it Talib committed no offence. He will accordingly be acquitted and discharged.

The rifle 'F' will be confiscated and handed to the police authorities.

Accused acquitted.

HUJAH LIJAH BINTI JAMAL v. FATIMAH BINTI MAT DIAH.

[Orig. Civ. Juris. (Briggs, J.) February 15, 1950]

[Kota Bharu — Civil Suit No. 66 of 1949]

Harta Sapencharian — Malay custom modifying Muslim Law — Law of Kelantan — Courts Enactment, Kelantan, 1925 — Courts Enactment, Kelantan, 1938 — Land Enactment, Kelantan, 1938, s. 95.

The plaintiff in this case, the lawful widow of Haji Che Mis bin Samat deceased, claimed as **harta sapencharian** one half-share of certain land registered in the Mukim Register in the name of the deceased. The District Officer before whom she made the claim under the provisions of section 95 of the Land Enactment, 1938, referred the matter to the Supreme Court.

Held, (1) that in Kelantan a claim for **harta sapencharian** can be brought as an ordinary suit in the High Court but that if the value of the property claimed is under $500.00 the Court would ordinarily refuse jurisdiction in favour of the Kathi or Chief Kathi's Court; (2) that if a case is referred to the Court under s. 95 of the Land Enactment, 1938, the High Court must entertain it if the Sessions Court cannot; (3) that on the facts the claim for a half-share of the land as **harta sapencharian** had been substantiated and therefore judgment must be given for the plaintiff.

Cases referred to :—

(1) *Coventry v. Willes* (1863) 12 W.R. 127.
(2) *Goodwin v. Roberts* (1875) L.R. 10 Exch. 337.
(3) *Ramah v. Laton* 6 F.M.S.L.R. 128.

CIVIL SUIT.

Parties in person.

The facts and arguments sufficiently appear from the Judgment.

Cur. Adv. Vult.

Briggs, J. : — The plaintiff is the lawful widow of Haji Che Mis bin Samat deceased and the defendant is his niece and the administratrix of his estate. The plaintiff claims one half-share of certain land registered in the Mukim Register in the name of the deceased as "*harta sapencharian*". She first made this claim before the District Officer under the provisions of section 95 of the Land Enactment. Under sub-section (vi) the District Officer certified the existence of a dispute and directed her to apply to the Supreme Court. He certified the value of the half-share in issue as $527.09.

The phrase *harta sapencharian* I understand to mean "acquired property", with the specialized meaning in this context of "property acquired during the subsistence of their marriage by a husband and wife out of their joint resources or by their joint efforts". The "acquisition" referred to may extend to cover mere enhancement of value by reason of cultivation or development. The phrases *harta sharikat* and *harta charian laki bini* appear to be synonymous with *harta sapencharian* in this context. The juristic effect of a claim by a widow that land registered in the name of her deceased husband is *harta sapencharian* was considered at length in an article by Mr. Justice Taylor entitled "Malay Family Law" and printed in Part I of Vol. XV of the Journal of the Malayan Branch, Royal Asiatic Society, (May, 1937), where several